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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1186

SOUTHFIELD POLICE OFFICERS ASSOCIATION, a Michigan non-profit corporation, and RONALD ROEDIGER, individually and as president of said corporation,
Petitioners,

v.

CITY OF SOUTHFIELD, a municipal corporation, DONALD V. SMITH, City Administrator, PATRICK G. FLANNERY, City Clerk and C. HUGH DOHANY, City Treasurer,
Respondents,

and

SOUTHFIELD FIRE FIGHTERS ASSOCIATION Local No. 1029, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, a voluntary unincorporated association, and JOHN BEARDSLEY, individually and as president of said association,
Intervening Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF MICHIGAN AND THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Southfield Police Officers Association, a Michigan non-profit corporation, and Ronald Roediger, individually and as president of said corporation hereby petition this Honorable Court for a writ of certiorari to review a judgment and opinion of the Court of Appeals for the State of Michigan rendered in this cause on March 25, 1969 and from the denial of application for leave to appeal entered by the Supreme Court for the State of Michigan on November 18, 1969, and respectfully show:

(a) OPINIONS IN THE COURT BELOW

1) The opinion of the Circuit Court for the County of Oakland, State of Michigan: *Southfield Police Officers Association v. City of Southfield and Southfield Fire Fighters Association* (January 22, 1967). Copy of the opinion and judgment attached as Appendix A.

2) The opinion of the Court of Appeals for the State of Michigan: *Southfield Police Officers Association v. City of Southfield and Southfield Fire Fighters Association* (March 25, 1969) 16 Mich. App. 511. Copy of the opinion attached as Appendix B.

3) The opinion of the Supreme Court for the State of Michigan: *Southfield Police Officers Association v. City of Southfield and Southfield Fire Fighters Association* (November 18, 1969) 382 Mich. 795. Copy of the opinion attached as Appendix C.

(b) JURISDICTION OF THIS COURT

The judgment sought to be reviewed was dated and entered on March 25, 1969 by the Court of Appeals for the State of Michigan. Application by petitioners for leave to appeal was denied by the Supreme Court for the State of Michigan on November 18, 1969. The statute conferring on this court jurisdiction to review such judgment by writ of certiorari is 28 U.S.C. 1257 (3).

(c) QUESTIONS PRESENTED FOR REVIEW

Does the judgment of the Court of Appeals for the State of Michigan, which affirms the interpretation of the Oakland County Circuit Court Judge in applying a valid state statute and a valid City Charter Amendment, deprive the petitioners of a vested property right without due process of law?

(d) CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Federal Constitutional provision involved is the Fourteenth Amendment, Section 1 (due process and equal protection). The Michigan statute involved is Public Act 1925, No. 125, cited as Michigan Compiled Laws Annotated 123.841. The City Charter Amendment involved is Section 6.20 of the City Charter for the City of Southfield, Michigan. The verbatim text of these sections of the state statutes and City Charter is attached as Appendix D.

(e) CONCISE STATEMENT OF THIS CASE

On April 25, 1966 the citizens of the City of Southfield, Michigan, approved what is now Section 6.20 of the Southfield City Charter which concerns parity of compensation between Fire and Police Departments. The Charter amendment provided that the members of the City Police and Fire Departments having corresponding classifications shall receive equal annual compensation, including equal wages. The Charter amendment was approved on April 25, 1966 and was to be effective as of July 1, 1966.

At the time of the passage of Section 6.20 of the City Charter, the Southfield firemen were working a 63 hour work week and the Southfield policemen were working a 40 hour week. Prior to July 1, 1966, the firefighters were receiving, rank by rank, 5 per cent less compensation than the police officers.

On July 1, 1966 a newly adopted state statute, (Michigan Compiled Laws Annotated, 123.841) reduced the firefighters' work week to 56 hours per week.

On July 1, 1967, the respondent, City of Southfield, Michigan, complied with Public Act 1925, No. 125, (Michigan Compiled Laws Annotated Sections 123.841) and reduced the firefighters' work week by 7 hours, thereby creating a 56 hour work week. The petitioners made repeated demands upon the respondent for an equal hour reduction pursuant to provisions of said City Charter which provided in parity compensation between the policemen and firemen of that city. The demands of the police officers were refused, thus causing the petitioners to file suit in the Oakland County Circuit Court.

The petitioners prayed for the following relief in the trial court:

A) That the court adjudicate and decree that said failure on the part of the respondents herein to bring into parity the average, normal, regular and customary hours of the work or duty, is illegal and in contravention of the provisions, both letter and spirit of Section 6.20 of the Charter of the City of Southfield as amended.

B) That the respondents be required to remit to each of the police officers of the City of Southfield, all overtime earnings heretofore illegally withheld by virtue of said failure to reduce the hours of employment effective July 1, 1967.

The respondents moved the trial court for a summary judgment for the reason that the petitioners had failed to state a claim upon which relief could be granted. The trial court granted such motion and the petitioners appealed to the Michigan Court of Appeals and prayed that the appellate court reverse the ruling of the trial court for the reason that the summary judgment, as entered, deprived the petitioners of the constitutional rights as afforded them by the provisions of the Fourteen Amendment of the Michigan and United States Constitution.

The Michigan Court of Appeals, after considering the briefs and oral arguments of the parties, affirmed the ruling of the trial court.

The petitioners thereafter applied to the Michigan Supreme Court for leave to appeal the decision of the Michigan Court of Appeals. Said application was denied on November 18, 1968.

(f) BASIS FOR FEDERAL APPELLATE JURISDICTION

There has been a final judgment entered in this cause by the Michigan Supreme Court and therefore this cause which involves substantial questions of due process, cannot be further reviewed by any state appellate court.

(g) ARGUMENT

The petitioners contend not that the Charter amendment establishing parity or M.C.L.A. 123.841 is unconstitutional, but rather that the court's interpretation of the two acts has deprived them of their constitutional rights.

Article I, section 17 of the Michigan Constitution of 1963 prescribes the general protection which the petitioners maintain has not been afforded them by the lower court's action. Section 17 is stated as follows:

> "No person shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty or *property* without due process of law." (Emphasis added.)

Pursuant to the decision of *Naudzius v. Lahr,* 253 Mich. 216 (1931), the quality of rights which are protected by the Michigan Constitution is the same as that which is preserved by the Fourteenth Amendment to the Federal Constitution.

In view of the *Naudzius* decision, *supra,* if the refusal of the respondent, City of Southfield, to re-create a parity of compensation and wages, and the trial court's sanctioning of this refusal, has in fact violated the rights afforded the

petitioners by the Michigan Constitution, then the refusal of the City of Southfield to adjust the compensation of the police officers and the lower court's sanctioning of this refusal, has violated the rights afforded the petitioners by the Federal Constitution.

It is incumbent upon the petitioners to distinguish and identify the rights which the City of Southfield and the trial court, by its ruling, have violated.

The petitioners maintain, and their arguments will substantiate, that the trial court's ruling that the statutory reduction of the fire fighter's work hours has caused no disparity whatsoever, has in fact caused the vested rights of the Southfield police officers to be impaired by the legislative action.

The courts of this state have uniformally been in accord with the proposition which is stated as follows in the decision of *Sherwin v. State Highway Commissioner,* 364 Mich. 188 (1961) at Page 200:

> "The term 'property' as used in the due process clause refers to vested rights."

In view of the *Sherwin* decision, *supra,* the petitioners are afforded a protection of their vested rights by the due process clause of both the Michigan Constitution and the United States Constitution.

The vested rights which the Southfield police officers maintain have been infringed upon are those rights afforded them by §6.20 of the Southfield City Charter which mandatorily requires a parity of compensation and wages, rank by rank, with the Southfield fire fighters.

The right to parity of compensation and wages was adopted by the electorate on April 25, 1966, to be effective in full force as of July 1, 1966.

Prior to the adoption of parity, the fire fighters were working a customary work week of 63 hours while the police officers were working a customary work week of 40 hours. The fire fighters were, prior to the adoption of parity, being compensated at a rate of five (5%) per cent less than that which the police officers received.

The right of parity was adopted within this framework to rectify this five (5%) per cent compensation differential. On July 1, 1966, the fire fighters duly expected their right to parity to be effectuated, and, the City of Southfield, took the necessary steps to preserve this right. Accordingly, the fire fighters received a five (5%) per cent increase in their rate of compensation.

The Southfield fire fighters have insisted that their right to parity, their vested right to parity, be honored and effectuated. The City of Southfield, in accordance with the intentions of the electorate, respected the fire fighters' vested right to parity and created parity by a five (5%) per cent increase in the fire fighters' rate of compensation.

The right to parity of compensation and wages became vested as to the fire fighters upon the electorate's adoption of the parity Charter Amendment.

Just as the right to parity of compensation and wages became vested as to the fire fighters upon the electorate's adoption of the Charter amendment, the identical right to parity became vested as to the petitioners herein, the Southfield police officers.

The City of Southfield honored the vested rights of the police officers and fire fighters from July 1, 1966 to July 1, 1967.

On July 1, 1967, however, the City of Southfield complied with the provisions of M.C.L.A. 123.841, and accordingly reduced the fire fighters' working hours to 56 hours per week.

The effect of the statutory reduction of the fire fighters' work week to 56 hours contravened the intent of the electorate by creating an inherent disparity of compensation and wages.

As the City of Southfield complied with the statutory reduction of the fire fighters' hours, the fire fighters were afforded an 11.1% increase in their rate of compensation.

While the fire fighters received an 11.1% increase in their rate of compensation, the rate of compensation paid to the police officers remained static.

While the letter and spirit of the Charter amendment which established parity of compensation and wages vested the right of parity in the Southfield police officers, the City of Southfield's compliance with M.C.L.A. 123.841 caused this vested right to be infringed upon by increasing the fire fighters' rate of compensation by 11.1%.

The police officers, seeking a restitution of their vested rights, sought relief from the trial court. The trial court, however, held that theirs was not a valid claim because the statutory reduction created no disparity.

In effect, the trial court has construed the provisions of a constitutional statute (M.C.L.A. 123.841) and a constitutional Charter amendment (§6.20 of the Southfield City Charter), and has arrived at an unconstitutional result of depriving the police officers of their vested rights to parity.

In *Briggs v. Campbell, Wyant and Cannon Foundry Co.*, 2 Mich. App. 204 (1966), the Court reaffirmed the following constitutional mandate:

> "Vested rights may not be impaired by legislative action."

The question which now must be answered is whether the Southfield police officers' rights to parity of compensation and wages is that which is classified as a vested right.

The Michigan Supreme Court, in the decision of *Rookledge v. Garwood,* 340 Mich. 444 (1954), has provided the answer by defining the term "vested rights". At page 456, the Court stated:

> "The question of determining what is a vested right is always a source of much difficulty. This is illustrated by our holding in *Wylie v. City Commission of Grand Rapids,* 293 Mich. 571, where we said at page 587:
>
> > 'Few questions have troubled the courts more than the problem of what are vested rights. What some courts have considered vested, others have considered inchoate. *44 Yale Law Journal,* p. 358 (note). A few courts have frankly recognized that policy considerations, rather than definitions, are controlling, and have defined a vested right as a right of which the individual could not be deprived without injustice.
> >
> > In its application as a shield of protection, the term, 'vested rights' is not used in any narrow or technical sense, or as importing a power of legal control merely, but rather as implying a vested *interest which it is right and equitable that the government should recognize and protect, and of which the individual could not be deprived arbitrarily without injustice.' 2 Cooley's Constitutional Limitations* (8th Ed.) p. 745. (Emphasis theirs.)
>
> "This language was quoted with approval in *Diamond State Iron Co. v. Husbands,* 8 Del Ch 205 (68 A 240).
>
> > 'A vested right, as that term is used in relation to constitutional guaranties, implies an interest "which it is proper for the State to recognize and protect, and of which the individual could not be arbitrarily without injustice."' *City of Los Angeles v. Oliver,* 102 Cal App 299 (283 P 298)."

The Southfield police officers' right to parity of compensation and wages is a right that the electorate of Southfield approved, adopted and provided for them as of April 25, 1966. Parity as provided by the Charter amendment is not a discretionary privilege but a right which was expressly created and vested in them by the electorate.

The vested right of parity is a right which was recognized and protected by the City of Southfield prior to the effective date of M.C.L.A. 123.841. Upon the adoption of the parity Charter and upon its operative date, July 1, 1966, the City of Southfield protected the vested right in favor of the fire fighters by increasing their rate of compensation by five (5%) per cent.

Although a vested right, by definition, is a right of an individual which could not be deprived arbitrarily without injustice, the City of Southfield has unjustly deprived the police officers of their vested right to parity by complying with the statutory reduction of the fire fighters' working hours which has afforded the fire fighters a continual 11.1% increase in their compensation.

The lower court's ruling the M.C.L.A. 123.841 has not created a disparity has ignored this 11.1% increase in compensation, and has thus, in effect, allowed the City of Southfield to take from the police officers the parity of compensation and wages which the electorate had vested upon them.

While there existed a parity of compensation and wages subsequent to the adoption of the parity amendment, and prior to July 1, 1967, the operative date of M.C.L.A. 123.841, there presently exists no parity whatsoever. The City of Southfield, by virtue of its compliance with the statutory reduction, has sanctioned an 11.1% increase in the fire fighters' compensation over the compensation presently afforded the police officers.

The lower court, by its ruling, has also sanctioned this 11.1% disparity, and in effect, has also sanctioned the encroachment of the police officers' vested rights to parity which existed prior to the operative date of M.C.L.A. 123.-841.

The decision of *Ramey v. Michigan Public Service Commission,* 296 Mich. 499 (1941), is precisely in accord with the position and contentions of the petitioners herein.

In the *Ramey* decision, *supra,* the Supreme Court held that there was an infringement of vested rights by legislative action.

The *Ramey* decision, *supra,* at page 462, stated that:

> "It is a rule that after the services are rendered under a law which fixes the rate of compensation, there arises an implied contract to pay for those services at that rate and the contract cannot be impaired by subsequent legislation."

The case at bar is on point with the letter and spirit of the rule which was clearly established by the *Ramey* decision, *supra.*

When the parity Charter was adopted by the electorate on April 25, 1966, the fire fighters were working a customary 63 hour work week and the police officers were working a customary 40 hour work week. In the framework of the 63-40 hour work week ratio, the fire fighters were being compensated at a rate which was five (5%) per cent less than that received by the police officers.

To rectify the obvious disparity, the City of Southfield protected the fire fighters' vested right of parity and followed the intent of the electorate by increasing their rate of compensation by five (5%) per cent. This action by the City of Southfield created the parity which was

sought by the electroate and the proponents of the Charter amendment, the Southfield Fire Fighters Association.

It is to be noted that the City of Southfield made no work hour adjustment to bring the police officers and firemen into parity, but rather, adjusted the compensation of the fire fighters. As the electorate established parity within the 63-40 hour work week framework, the only logical means of effecting the parity was to allow this framework to remain intact and to increase the fire fighters' compensation.

The parity which was created by the five per cent (5%) increase in the fire fighters' compensation remained in effect from July 1, 1966, the operative date of the parity amendment, until July 1, 1967, the operative date of M.C.L.A. 123.841.

The effect of M.C.L.A. 123.841, which was not brought to the attention of the electorate, was to increase the fire fighters' rate of compensation by reducing their work hours while their income remained constant. In other words, the fire fighters were being afforded a higher dollar per hour rate of compensation than the police officers were being afforded. In other words, the effect of M.C.L.A. 123.-841 was to afford the fire fighters an 11.1% increase in their rate of compensation by legislative action which the *Ramey* decision, *supra,* holds cannot be done.

There are three periods of time for this Court to consider. These periods are labeled as follows:

(a) Pre-parity period prior to July 1, 1966;

(b) Parity period of July 1, 1966 to July 1, 1967;

(c) Post-parity period from July 1, 1967, to present.

In reviewing the course of events, it can be seen that the police officers' rate of compensation was used as the criteria for establishing parity. For the sake of the following illustration, the police officers' compensation will be noted as zero. By use of this criterion of zero, the following situation becomes apparent.

During the pre-parity period, the firemens' compensation was at a negative 5% in comparison with that of the police officers which was at zero.

During the parity period, the fire fighters, via their increase in compensation, were at zero, while the police officers remained at zero. Thus, a mutual parity.

The post-parity period finds the police officers still at zero while the fire fighters are now at a plus 11.1%.

Thus, the plight of the police officer has been revealed.

The words of the *Ramey* decision, *supra,* are again relevant:

> "It is a rule that after the services are rendered under a law which fixes the rate of compensation, there arises an implied contract to pay for those services at that rate, and the contract cannot be impaired by subsequent legislation."

Applying the aforestated facts to the *Ramey* decision, *supra,* it can be found that a law, the Charter amendment creating parity, fixed the rate of compensation for the fire fighters and police officers at an equal annual wage within a framework which was in existence both when the parity Charter amendment was adopted and when it became effective. The framework was the 63 hour-40 hour work week ratio.

Pursuant to the language of the *Ramey* decision, *supra,* there arose an implied contract to pay for the fire fighters'

and police officers' services at that established rate of compensation which was in effect during the parity period.

Parity created an equal annual wage by increasing the fire fighters' rate of compensation while causing the police officers' rate of compensation to remain static.

The subsequent legislation referred to in the *Ramey* case, *supra,* is identical in effect with that which confronts the police officers.

M.C.L.A. 123.841 reduced the hours of the fire fighters while it increased their rate of compensation. While the fire fighters received the benefit of this subsequent legislation, the police officers have received no proportional increases whatsoever.

While the Charter amendment created and vested the right of parity in both the police officers and fire fighters, the provisions of the subsequent legislative action reducing the fire fighters' hours has destroyed the parity and, as such, has infringed upon the vested rights of the police officers.

The City of Southfield has refused to recognize the disparity created by the subsequent legislative action, and the lower court, in erroneously agreeing with the respondents herein, has approved of an unconstitutional deprivation of the police officers' vested rights to parity.

The right to parity which vested in the police officers as of July 1, 1966, has ceased to exist as of July 1, 1967, due to the subsequent legislation.

Not only have the petitioners had a vested right of parity infringed upon, the refusal of the City of Southfield, and in addition thereto, the decision of the lower court, has caused the petitioners a denial of the equal protection of the law.

Article I, Section 2 of the Michigan Constitution of 1963, states that:

> "No person shall be denied the equal protection of the laws."

Parity was established in the City of Southfield and the Southfield fire fighters were protected with an increase of five, (5%) per cent in their compensation. Subsequent to the operative date of M.C.L.A. 123.841, the fire fighters are now receiving an increase of 11.1% in compensation while the police officers are not receiving the protection of the parity Charter amendment, which by its own application, should provide a proportional increase for the police officers.

The petitioners herein have been refused their appropriate relief by the respondent, the City of Southfield, as well as the lower courts. The petitioners herein now take their cause to this appellate court to seek review for the reasons stated above.

Respectfully submitted,

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APPENDIX A

OPINION OF THE TRIAL COURT

(State of Michigan—Circuit Court Oakland County)

The Court: This matter comes before the Court today on a Motion for, rather on an Order to Show Cause as to why a preliminary injunction should not issue and an answering Motion by the added defendant, Fire Fighters Association, for a Summary Judgment of No Cause of Action.

Now it is true that this Cause, not this Cause, but this section of the Charter has been before the Court before in this year 1967, and it is true that this Court upheld the section by saying that this Court placed great emphasis on the desires of the people, who are being governed, expressed by majority vote.

Now perhaps this Court has gone too far in simplifying the issues of this present Cause, but it seems to me, gentlemen, that if you read this section 6.20 of the Southfield Charter, there is only one purpose and that is to have parity of annual compensation as between Firemen and Policemen in that City. Now in this Cause, as I read it, and I read the Complaint during the argument, it would seem to me that the Policemen now want to get away from parity. They want either an increase in pay or the same money for lesser hours.

This Ordinance was adopted by the people of Southfield after the Legislature had indicated that effective July 1, 1967, the Firemen would not work more than sixty-three hours a week.

Now those voters, the people of the community, must have been presumed to have known of that impending change when they voted, and in adopting this after providing for parity of annual compensation, they went on to say "no disparity in said annual compensation or wages shall occur or be justified on account of difference between Policemen and Firemen as to average, normal, regular or customary hours of work or duty," and certainly when the Legislature fixes the maximum number of hours, that maximum number of hours must be taken into consideration in determining what the average, normal, regular or customary hours of work are.

Now this section goes on to say, prohibits rather any attempt to avoid the intent of this section. Well, none of the people in the City of Southfield who are in an administrative position, have attempted to avoid this section as requires parity. They, as everybody else in the State, have become subject to a law which was about to become effective when the Ordinance was adopted, and so I come back to my original point. It seems to me the issue is rather simple, the issue being whether you can change the clear, precise language of section 6.20 of the Charter of the City to do away with parity of equal, annual compensation—every one of those three words having significance.

I don't think you can change the Ordinance by any device and therefore I don't think that the plaintiff in this Cause presents a good Cause of action because he would seek to strike parity from the compensation received by the Policemen.

The Firefighters have a Motion for Summary Judgment of No Cause of Action and they should prevail.

OPINION OF THE TRIAL COURT—RE-HEARING MOTION FOR SUMMARY JUDGMENT

The Court: We spent some time on this matter arguing about the interpretation of Ordinance 6.20 of Southfield, and its relationship, perhaps I should say the significance of the Act which became effective in 1966 when applied to the Ordinance.

Now speaking only on this question of constitutionality I point out that the Ordinance we are concerned with does not make the classification. It speaks of classifications which may be made by the, I assume, Civil Service Department—perhap it was another name. Is it Civil Service or Police Department?

Mr. Beras: They are not under Civil Service.

The Court: Those classifications that might conceivably be made will be the product of the Board. For example, if you read the Ordinance you will find that it refers to the comparable classification because it does not establish the Police Chief and Fire Chief, Police Captain and Fire Captain, Police Lieutenant and Fire Lieutenant, Police Sergeant and Fire Sergeant, Police Patrolman and Fire Fighters, and other corresponding classifications of the Police and Fire Department.

Now all that the Ordinance does is say when and if the Board, Police and Fire Board creates a classification, if that classification has a comparable one in the other Department, then the members of the Departments, two Departments which fit into those classifications shall be paid annual equal compensation, so I don't follow your argument to the effect that this Section of the Ordinance creates a discriminatory or arbitrary classification. Actually

it doesn't create any classification. That is up to another group of people who presumably act within the provisions of the Ordinance and exercise at their discretion—

Mr. Gage: Could I ask your Honor a question?

The Court: Yes.

Mr. Gage: Perhaps it is out of the ordinary. It's kind of a declaratory judgment type of question. If, your Honor, the Police Officers were to be deemed to work customarily thirty hours a week by order of the Board that sets up these classifications or manages the classifications, so to speak, would that be deemed not to effect the Fire Fighters hours for compensation? Could they not come in and say that something is unfair, that they are being prejudiced?

The Court: I think that would be a matter for future litigation. I could conceive of an effort on the part of this Board to create disparity of compensation, of annual compensation as between the firemen and the policemen by establishing an unusually long vacation period for one or the other, unusually long working hours as contrasted with the other, but this, it occurs to the Court, would be a matter to consider after it had actually happened.

In other words, I don't believe that this Court can presume that the governing body, the Board would arbitrarily exercise their authority to establish unreasonable hours or unreasonable vacation periods or things of that kind. I think conceivably the thing could happen, but I think it has to happen before the Court can test propriety of the Judgment. I don't think this Court is in a position to anticipate that some group such as the Board in this case would arbitrarily attempt to avoid the purpose of the Ordinance by some sort of abuse.

The Court spoke at some length before and I am not in a position to change my ruling in any respect; particularly I feel rather strongly about this point as to when the

State Legislation becomes a matter of presumed knowledge for the voters. Even though the Statute does not become operative until I believe it was July 1, still the fact remains the Act was in effect and on the public records at the time that the voters of Southfield passed, adopted the Ordinance. So I think they are charged with knowledge of that Statute without any question, but in any event the Court will not change its position, the position having been noted in some length on the record and the Motion for a re-hearing will be denied.

JUDGMENT OF THE TRIAL COURT

(State of Michigan—Circuit Court, Oakland County)

At a session of said Court held in the Court House in the City of Pontiac, Michigan on January 22, 1968.

Present: Honorable Clark J. Adams, Circuit Judge.

This matter having come on to be heard upon plaintiffs' request for preliminary injunction in accordance with the prayer of their complaint, and upon the motion of defendants and intervening defendants for the entry of a summary judgment in their behalf for the reason that plaintiffs' complaint fails to state a claim upon which relief can be granted, and the Court having considered the pleadings herein and having heard the arguments of respective counsel, and the Court being fully advised in the premises, now, therefore, on motion of Sigmund A. Beras, counsel for defendants, and Rothe, Marston, Mazey, Sachs & O'Connell, counsel for intervening defendants,

It is Ordered that said motions for summary judgment on behalf of said defendants and intervening defendants be and the same are hereby Granted, for the reason that

said complaint fails to state a claim upon which relief can be granted; and

It is Further Ordered that, for the foregoing reason, plaintiffs' request for preliminary injunction be and the same is hereby Denied.

Clark J. Adams
Circuit Judge

ORDER DENYING PLAINTIFFS' MOTION FOR REHEARING

(State of Michigan—Circuit Court, Oakland County)

At a session of said Court held in the Court House in the City of Pontiac, Michigan on January 22, 1968.

Present: Honorable Clark J. Adams, Circuit Judge.

This matter having come on to be heard upon the Motion for Rehearing on Summary Judgment for Defendants and Order Denying Preliminary Injunction filed by plaintiffs herein, and the parties having presented oral arguments for and in opposition to said Motion for Rehearing, and the Court being fully advised in the premises, now, therefore,

It is Ordered that said motion be and the same is hereby denied.

Clark J. Adams
Circuit Judge

APPENDIX B

MICHIGAN COURT OF APPEALS OPINION AND JUDGMENT

(State of Michigan—Court of Appeals, Division 2)

Before: Lesinski, C.J., Brennan and Fitzgerald, JJ.

Fitzgerald, J.

CL 1948, §123.841 (MCLA §123.841), provides that no firefighter shall be required by his employing municipality to work more than 24 hours straight or to be off duty less than 24 consecutive hours out of any 48 hour period. The firefighters were also entitled to an additional 24 consecutive hours off duty every 12 days beginning July 1, 1966, so that on that date no firefighters must work more than an average of 63 hours a week. A similar provision provided that on July 1, 1967, no firefighter must work more than an average of 56 hours a week.

On April 25, 1966, the people of the City of Southfield approved §6.20[1] as an amendment to the city charter to

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[1] "Section 6.20, Fire and Police Departments: Parity of Compensation.

"(1) Members of the Police and Fire Departments having corresponding classifications, as hereinafter enumerated, and periods of service, shall receive *equal annual compensation*, including equal wages: Police Chief, and Fire Chief; Police Captain, and Fire Captain; Police Lieutenant, and Fire Lieutenant; Police Sergeant, and Fire Sergeant; Police Patrolman, and Firefighter; and other corresponding classifications of the Police and Fire Departments. *No disparity in such annual compensation or wages shall occur or be justified on account of differences between policemen and firemen as to average, normal, regular or customary hours of work or duty* as to furloughs, leaves or leave days, or vacations; nor on account of the hazards or character of such work or duty; nor on account of changes in the titles of classifications, as hereinabove enumerated; nor indirectly, to avoid the intent of this section, *which is to assure parity of compensation and wages to policemen and firemen.* (Emphasis supplied.)

take effect July 1, 1966, providing for a parity of compensation for firefighters (who were receiving 5% less) with the policemen of the community. In accordance with the State statute, *supra,* the city, on July 1, 1967, reduced the hours of the firefighters from 63 to 56. The subject of this suit is a corresponding demand by the policemen that their hours be proportionately reduced by 7 hours from 40 to 33. The city refused, and the police department sought an injunction to prevent the city from making them work more than 33 hours a week. The court granted summary judgment[2] for the city on the 2 issues which become relevant to this appeal:

1) The electorate of the city was presumed to know of the State statute so that when they passed section 6.20, it was done within the framework of that statute.

2) Section 6.20 deals only with parity of compensation which does not equate to a parity of hours, so that there was no ratio fixed between the two as a result of the election which would require a corresponding reduction in hours or increase in pay for the policemen when the hours of the firemen were reduced.

Appeal ensued after plaintiff-appellants' motion for a rehearing was denied. The firefighters association intervened in this cause, in support of the city, the defendant-appellee.

Plaintiff admitted that the people are indeed presumed to know the law.[3] However, essential to their correct as-

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[2] GCR 1963, 117.2(1).

[3] *Cargill v. Power* (1850), 1 Mich 369; *Hammond v. Michigan State Bank* (1943), Walk Ch 214.

sumption that a law not yet in effect is of no force or notice to the people[4] is a corresponding showing that the State statute was not in effect when the April 25, 1966, election took place. The statute passed by the 1965 legislature was *effective* March 31, 1966, although not *operative* until July 1, 1966, and was notice to the voters. Plaintiffs would have us find that the legislature intended the 4-month (March-July) gap so that the citizens could have an "opportunity to learn what changes were to be made in the law before these changes should come into operation".[5] However, by using the words "effective March 31, 1966" the 1965 legislature, in the present case, did provide the citizens ample opportunity to become informed of the new law before March 31, 1966, so that they then might take any steps after that time to implement the statute, if so desired, before it became operative on July 1, 1966.

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[4] *Cargill v. Power* (1850), *supra*: ("No statute has any force until it becomes the law of the land."); *McGavack v. Ducharme* (1916), 192 Mich 98: (Act had no force at law until time it took effect.); *Caroline Price v. William Hopkins, et al.* (1865), 13 Mich 318.

[5] *Caroline Price v. William Hopkins, et al., supra.* This decision was based on a constitutional provision, now found at Const 1963, art 4, §27, that no public act shall take effect until 90 days after the end of the session at which it was passed, unless the legislature, by a two-thirds vote, should otherwise direct. Michigan Const 1850, art 4, §20. The 1965 legislature voted to give the law effect on March 31, 1966. The *Price Case* dealt with an act passed March 20, 1863, to take effect on January 1, 1864, to bar the right of action under the old statute of limitations regarding real property. The court found that the 9-month delay was intended to give people notice to bring suit under the old statute of limitations, but that the act did not take effect until January 1. Thus, the deed to plaintiff-grantee during 1863 was not under the act. The case appears irrelevant to the argument of plaintiff here as no attempt is made to give the law any prior application before that date rightly set by the 1965 legislature, which did provide a full year for the citizens to become informed of the changes before it became effective, and additionally provided 90 days after the close of the 1965 session for this purpose.

The law of the State can be said to be read into the city charter[6] in this instance, and it is assumed that when the voters agreed that:

> "No disparity in such annual compensation shall * * * be justified on account of differences between policemen and firemen as to average, normal, regular or customary hours of work or duties * * * to avoid the intend of this section, which is to assure parity of compensation and wages to policemen and firemen.",

they intended that the reduction of the hours of the firefighters as provided in the State statute would have no effect on the parity of compensation.

Plaintiffs create an hours-pay ratio fixed and effective April 25, 1966, of 63-40, which would provide for a corresponding reduction of the ratio to 56-33 as of July 1, 1967, and not 56-40 as asserted by the city. This classification is untenable as is the alternative argument that if a reduction in hours is not made, the hourly wages of the policemen should be proportionately increased by the amount of the effective increase in hourly wages of the firefighters (11%) because of the reduction in their hours, while the actual wages of both departments remain constant. We do not agree with plaintiff's contention that since parity of compensation under section 6.20 is distinguished from parity of wages, the voters intended that hours of work be the basic "yardstick for measuring com-

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[6] *Saginaw Council v. Board of Trustees* (1948), 321 Mich 642, and cases cited therein.

pensation".[7] Rather, the plain language of section 6.20 precludes hours from being considered as part of compensation.

Such a ratio was not fixed as of the date of the election by any "existing framework" which would bind any charter amendment by the electorate to such a ratio irregardless of future disparities. Instead, parity was established at the election by an electorate presumed to know that the hours of firefighters would be reduced in the future. A rereading of the portion of subsection 1 of section 6.20 set forth above reinforces our belief and finding that the voters intended that normal or customary working hours of the 2 departments are not relevant to the parity of their compensation, and may fluctuate if their wages remain the same, especially where the normal or customary hours of the firefighters have already effectively been reduced and set by State statute.

Affirmed. No costs, a public question.

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[7] *Satterly v. City of Flint* (1964), 373 Mich 102. Amendment to city charter provided uniform pay plan, but city continued to pay firemen for 44-hour week rather than actual 63 hour week which was worked, in order to achieve parity with policemen's 44-hour week. The 19 hour period where no compensation was paid the firemen had always been considered proper until this action. The court held that firemen do not work a "normal week" as derived from reference to the legislative history of amendments, ordinances and actions of all concerned. The hours spent on the job were *not* relevant to the compensation in *Satterly* just as they are not here. The charter provision is also quite different.

APPENDIX C

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 18th day of November in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice; John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and the same is hereby *Denied,* as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 18th day of November in the year of our Lord one thousand nine hundred and sixty-nine.

Donald F. Winters,
Clerk.

APPENDIX D

FIRE DEPARTMENT HOURS OF LABOR

An act to regulate the hours of labor of employees in the fire departments of municipalities, and providing penalties for the violation thereof.

The People of the State of Michigan enact:

123.841 Fire department employees; period of duty; days off duty; work hours per week

Sec. 1. It shall be unlawful for any municipality, or any officer or employee thereof, in municipalities which maintain or may hereafter maintain an organized paid or part-paid fire department, to require any person in the employ of the fire department who is engaged in fire fighting or subject to the hazards thereof to be on duty in such employment more than 24 hours, or to be off duty less than 24 consecutive hours out of any 48-hour period. All persons in the employ of any organized paid or part-paid fire department who are engaged in fire fighting or subject to the hazards thereof shall be entitled to an additional 24 consecutive hours off duty in every 12-day period, beginning July 1, 1966, thereby requiring firemen to work not more than an average of 63 hours per week, and effective July 1, 1967, an additional 24 consecutive hours off duty in every 6-day period, thereby requiring firemen to work not more than an average of 56 hours per week. As amended 1965, No. 115, § 1, Eff. March 31, 1966.

Section 6.20—Charter for the City of Southfield, Michigan

"Section 6.20, Fire and Police Departments: Parity of Compensation.

"(1) Members of the Police and Fire Departments having corresponding classifications, as hereinafter enumerated, and periods of service, shall receive equal annual compensation, including equal wages: Police Chief, and Fire Chief; Police Captain, and Fire Captain; Police Lieutenant, and Fire Lieutenant; Police Sergeant, and Fire Sergeant; Police Patrolman, and Firefighter; and other corresponding classifications of the Police and Fire Departments. No disparity in such annual compensation or wages shall occur or be justified on account of differences between policemen and firemen as to average, normal, regular or customary hours of work or duty, or as to furloughs, leaves or leave days, or vacations; nor on account of the hazards or character of such work or duty; nor on account of changes in the titles of classifications, as hereinabove enumerated; nor indirectly, to avoid the intent of this section, which is to assure parity of compensation and wages to policemen and firemen.

"(2) All charter provisions, or parts thereof, and all ordinances, or parts thereof, in conflict herewith, are hereby repealed to the extent of such inconsistency.

"(3) This amendment is declared to be severable, and should any word, phrase, sentence, provision or subsection hereof be hereafter declared unconstitutional or otherwise invalid, or be disapproved by referendum, the remainder of this amendment shall not

thereby be affected, but shall remain valid and in full force and effect for all intents and purposes.

"(4) This amendment shall be effective July 1, 1966; provided that if the election at which the proposal petitioned for herein is held less than sixty (60) days before July 1, 1966, the effective date of this amendment shall be July 1, 1967."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1186

SOUTHFIELD POLICE OFFICERS ASSOCIATION, a Michigan non-profit corporation, and RONALD ROEDIGER, individually and as president of said corporation,
Petitioners,

v.

CITY OF SOUTHFIELD, a municipal corporation, DONALD V. SMITH, City Administrator, PATRICK G. FLANNERY, City Clerk and C. HUGH DOHANY, City Treasurer,
Respondents,

and

SOUTHFIELD FIRE FIGHTERS ASSOCIATION Local No. 1029, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, a voluntary unincorporated association, and JOHN BEARDSLEY, individually and as president of said association,
Intervening Respondents.

MEMORANDUM OPPOSING CERTIORARI, BY INTERVENING RESPONDENTS

THEODORE SACHS
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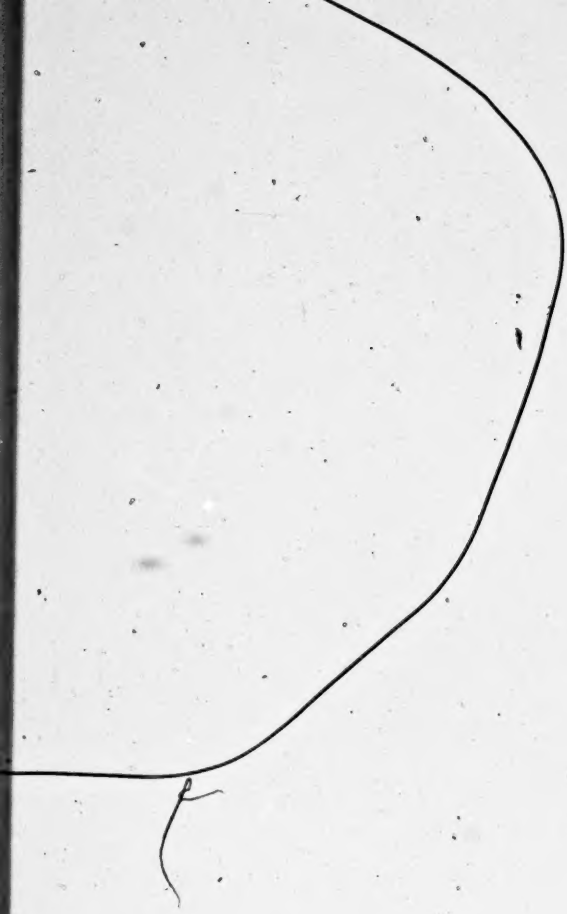
WO. 2-8745—WO. 2-8732



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Intervening Respondents.

MEMORANDUM OPPOSING CERTIORARI, BY INTERVENING RESPONDENTS

Petitioners' "federal" claim is patently frivolous and insubstantial—if not incomprehensible.

Petitioners contended in the state courts that a reduction in firemen's hours in 1967 occasioned by a concededly valid Michigan statute (Petition, Appendix D, p. 29) created a

disparity in compensation between policemen and firemen in violation of a concededly valid local charter (Petition, Appendix D, p. 30). Petitioners claimed, because of this alleged disparity, to be entitled to a reduction in their own hours of work so that the disparity would be eliminated. The heart of their argument was the proposition that "hours of work" was an integral part of the concept of "compensation" as used in the charter. The state courts rejected petitioners' construction, concluding instead that the charter by its own clear terms excluded "hours of work" as an element in determining "compensation". (The trial court summarily dismissed; the Michigan Court of Appeals affirmed, 16 Mich. App. 511; and the Michigan Supreme Court denied review, for want of merit (Petition, Appendix C, p. 28)).

Since Petitioners' "federal" claim of an infringed "vested right to parity" depends on an interpreted "right to parity" under the city charter, under an interpretation which the state courts have dispositively rejected on adequate non-federal grounds, Petitioners' claim is groundless. Since Petitioners' "right to parity" never existed, it could neither have been "vested" nor denied.

Far from presenting "a federal question of substance not theretofore determined by this court, [nor] decided. . . in a way probably not in accord with applicable decisions of this court" (Rule 19)—or indeed even litigated below—the Petition presents a trivial, frivolous and absurd argument not worthy of this Court's attention.

Respectfully submitted,

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Dated: February 24, 1970

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IN THE

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OCTOBER TERM, 1969

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Petitioners,
v.
CITY OF SOUTHFIELD, a municipal corporation, DONALD V. SMITH, City Administrator, PATRICK G. FLANNERY, City Clerk and C. HUGH DOHANY, City Treasurer,
Respondents,
and
SOUTHFIELD FIRE FIGHTERS ASSOCIATION Local No. 1029, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, a voluntary unincorporated association, and JOHN BEARDSLEY, individually and as president of said association,
Intervening Respondents.

MEMORANDUM OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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WO 2-8745—WO 2-8732

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MEMORANDUM OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

I. JURISDICTION OF THE COURT

Petitioners seek to invoke the jurisdiction of this Court, from a decision of the Court of Appeals of the State of Michigan, by relying on the provisions of 28 U.S.C. 1257 (3) (Petition, p. 3). Having admitted that both the Statute

of the State of Michigan and the Southfield City Charter Amendment are valid (Petition, p. 3), the only conceivable ground under which Petitioners could seek the intercession of this Court is under that category which refers to those cases "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States". However, a review of the entire record presented by the Petition for Writ of Certiorari, fails to disclose any federal question involved which would bring this Petition within the scope of the aforesaid cited provisions. Nowhere in the record is it shown that the state court's decision passed upon any federal question, but to the contrary a review of the Court of Appeals decision (Petition, Appendix B, p. 23) clearly reveals that the decision of the judgment in the state court was based upon nonfederal grounds which were more than adequate to support its judgment. This judgment, pure and simple, consisted of an interpretation by the state court of an admittedly valid state statute and charter amendment. The petition before this Court seeks to review this interpretation and the only federal question interjected by the Petitioners is that such an interpretation deprived them of a money judgment against the Respondents and therefore deprived them of a property right without due process of law under the Fourteenth Amendment to the Federal Constitution (Petition, pp. 6, 7). It is submitted that were this frivolous argument followed by this Court it would open the door to the United States Supreme Court by all state litigants who raised the issue of constitutionality because their claim for a money judgment deprived them of their property rights.

It should be noted that the Petitioners fail to cite a single case in support of their claim that this Court should

assume jurisdiction of this case under 28 U.S.C. 1257 (3). The only cases cited by Petitioners are state cases dealing with vested rights. These cases were not considered in view of the Court's decision that parity of hours were not covered by the charter amendment. There being no affirmative showing in the record for this Court's assumption of jurisdiction the Petition for Writ of Certiorari should be denied.

II. ARGUMENT

Although under the decisions of this Court these Respondents are of the opinion that no grounds exist for the exercise of jurisdiction by this Court, they feel obliged to answer some of the arguments presented by Petitioners regarding the interpretation of the parity provisions of the Charter Amendment (Petition, pp. 11-16). Commencing on page 11 of their petition and continuing through page 1c thereof the Petitioners adopt almost verbatim the argument presented in their brief filed in the Court of Appeals to the effect that the provisions of M.C.L.A. 123.841 created a disparity in compensation and wages between the Petitioners and fire fighters. That the City of Southfield, in failing to reduce the Petitioners' regular hours of work to 33 hours or paying the Petitioners additional compensation for all hours worked over 33 hours, deprived them of a vested property right which was granted to them by Section 6.20 of the Southfield City Charter.

An analysis of the plain language of Sec. 6.20 leaves no doubt as to what was stated and what was intended. It was stated and it was intended to avoid the type of claim now being made by Petitioners. The title to the amendment reads: "Fire and Police Departments: Parity of Compensation". There is no reference to parity of hours. The first

sentence of the amendment provides that policemen and firemen having corresponding classifications shall receive equal annual compensation and equal annual pay. Again there is no reference to equal hours. Then so there could be no doubt as to the meaning of the amendment with reference to *average* or normal hours of work and duty the second sentence provides, in among other things, that no disparity in such annual compensation or wages shall occur or be justified because of differences between policemen and firemen as to average or normal hours of work and duty. M.C.L.A. 123.841, in effect when this amendment was passed, reduced the average hours to be worked by firemen to 56 hours. The disparity in hours worked by firemen and policemen existed before the passage of the Firemen Hours of Labor Act and existed at the time that Sec. 6.20 was adopted. There is nothing in the Charter amendment that would justify Petitioners' claim that the amendment provided for keeping the disparity of hours at an equal level. If per chance the legislature might some day reduce the firemen's work week to 40 hours, is it conceivable that the people of Southfield in voting for the Charter amendment intended to reduce the policemen to a 17 hour week? This would seem to follow if Petitioners' arguments were accepted, as by reducing the original 63 hour week to a 40 hour week the police week would be reduced from a 40 hour week to a 17 hour week. We submit that the intent of the Charter amendment and the intent of the people voting for the amendment was to produce a parity of compensation between the firemen and policemen in the City of Southfield, nothing more nor nothing less.

With reference to the state cases cited by the Petitioners, it is obvious that the cases are inapplicable. Neither a denial of due process of law, an abrogation of a vested right or a denial of equal protection of law is involved in

the instant litigation. As was pointed out in the beginning of this memorandum, nothing more is herein involved except an interpretation by the state court of a valid state statute and charter amendment. The decision of the state court is adequately sustained by an intelligent and well reasoned application of local state law. Respondents therefore request that Petitioners' application for Writ of Certiorari be denied.

Respectfully submitted,

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